

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

**GENESIS SYSTEMS LLC,
a Delaware limited liability company,**

Plaintiff,

vs.

**XYTEL, INC. f/k/a
XYTEL CORPORATION,
a Delaware corporation,**

Defendant.

Case No.: 4:19-CV-00568

**DEFENDANT XYTEL, INC.’S MOTION FOR LEAVE TO FILE UNDER SEAL
THE DOCUMENTS ACCOMPANYING ITS NOTICE OF REMOVAL**

Pursuant to Federal Rule of Civil Procedure 5.2(d), Defendant Xytel, Inc. (“Xytel”) requests that the Court issue an order permitting Xytel to file under seal the documents accompanying its notice of removal.¹ In support of this motion, Xytel states as follows:

1. On May 9, 2019, Plaintiff filed a civil action against Xytel in the 16th Circuit Court of Jackson County, Missouri. The case was filed and remains entirely under seal. No pleadings are publicly available and the case number itself does not appear on the public docket.

2. The state court action is removable, as set forth more fully in Xytel’s notice of removal. Section 1446(a) instructs Xytel to include with that notice “a copy of all process, pleadings, and orders served upon such defendant...in such action.” 28 U.S.C.A. § 1446(a).²

¹ On this same date, Xytel is electronically filing its civil case sheet and notice of removal with the Western District. The documents referenced as Exhibits A–D in the notice are the documents that are the subject of this motion and therefore are not included with the electronically filed notice nor this electronically filed motion. Instead, Xytel has separately submitted to the Court a copy of its notice of removal, inclusive of Exhibits A–D, for the Court’s review.

² As also set forth in Xytel’s notice of removal, Xytel has never been properly served with any process, pleadings, or orders from the state court action. Xytel has not waived (and does not waive) service and expressly preserves its right to assert any and all defenses available to it in due time. Notwithstanding the lack of service, Xytel may properly file for removal at this time. *See Caranchini v. Peck*, 2019 WL 1325927, at *2 (W.D. Mo. March 25, 2019) (“Nothing in U.S.C. § 1441 requires a defendant to have been served prior to removing a case to federal court.”).

3. However, if Xytel were to electronically file its notice of removal inclusive of a copy of all process, pleadings, and orders that were (purportedly) served on Xytel in the state court action, those documents and the information contained therein would become publicly available upon the Western District's acceptance of the filing.

4. While Xytel is unclear as to why Plaintiff filed the state court action under seal, Xytel brings this motion (out of an abundance of caution and in full fairness to Plaintiff) to avoid inadvertently making public whatever documents or information that Plaintiff apparently wishes to keep private.

5. Xytel sets forth the propriety of removal in its notice of removal and will raise its defenses to Plaintiff's action at the appropriate time. The purpose of this motion is limited: Xytel requests only that the Court allow Xytel to file the documents accompanying its notice of removal under seal, for the reasons stated herein.

WHEREFORE, Defendant Xytel, Inc. respectfully requests that the Court issue an order authorizing Xytel to file the documents accompanying its notice of removal under seal, and for such other relief as the Court deems just, equitable, and proper.

Respectfully submitted,

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By: /s/ Brendan L. McPherson

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ATTORNEYS FOR DEFENDANT XYTEL, INC.

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2019, I caused to be served a true and accurate copy of the foregoing via U.S. Mail and electronic mail on the following counsel for Plaintiff:

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